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Plaintiff's Motion in Limine to Exclude Papers of Dr. Sheppard Prepared for Litigation and Donated to the Western Reserve Historical Society

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CHARLES MURRAY, Administrator
of the Estate of
SAMUEL H. SHEPPARD

Plaintiff

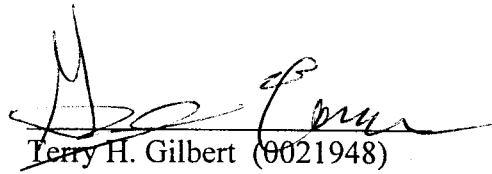
Case No. 312322

PLAINTIFF'S MOTION IN
LIMINE TO EXCLUDE PAPERS
OF DR. SHEPPARD PREPARED
FOR LITIGATION AND
DONATED TO THE WESTERN
RESERVE HISTORICAL
SOCIETY

Defendant

1

Respectfully submitted,



Terry H. Gilbert (0021948)

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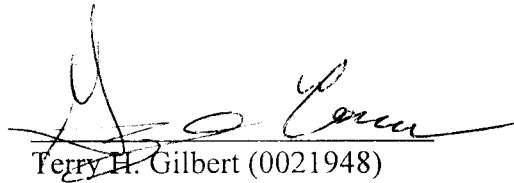
Cleveland, OH 44113

(216) 241-1430

Attorneys for Plaintiff

Certificate of Service

The undersigned certifies that the foregoing Motion in Limine has been served on William Mason, Prosecuting Attorney, Justice Center, 9th Floor, 1200 Ontario Street, Cleveland, Ohio 44113 on this 10th day of March, 2000.



Terry H. Gilbert (0021948)

George H. Carr (0069372)

Attorney for Plaintiff

Brief In Support

I. Background

At the request of his attorney, William J. Corrigan, in the 1954 trial, Dr. Samuel H. Sheppard prepared a biographical narrative to be used by trial counsel. These notes were donated to the Western Reserve Historical Society subsequent to the deaths of Dr. Sheppard and Mr. Corrigan, by Faith Corrigan, the daughter of Mr. Corrigan. These papers, prepared at the request of Mr. Corrigan are covered by the attorney-client privilege. Any attempt by the State to admit these papers into evidence would violate the attorney-client privilege.¹

II. Law and Argument

It is axiomatic that attorney-client communications are statutorily privileged and protected from disclosure. O.R.C. §2317.02(A) provides that an attorney shall not testify:

... concerning a communication made by a client in that relation or the attorney's advice to a client, except that the attorney may testify by express consent of the client or, if the client is deceased, by the express consent of the surviving spouse or the executor or administrator of the estate of the deceased client . . .

It is also well established that the attorney-client privilege survives the death of the client. *Swindler & Berlin v. U.S.*, 524 U.S. 399, 118 S.Ct. 2081 (1998). Further, this privilege belongs to the client, and waiver of this privilege may only be exercised by the client or the client's personal

¹ In addition to being covered by the attorney-client privilege, Dr. Sheppard's biographical notes are covered by the work product doctrine. Civ.R.26 (B)(3) provides that ". . . a party may obtain discovery of documents and tangible things **prepared in anticipation of litigation or for trial** by or for another party or by or for that other party's representative (including his attorney . . .) **only** upon a showing of good cause therefor." See *In re Disciplinary Counsel v. O'Neill* (1996), 75 Ohio St.3d 1479, 664 N.E.2d 532.

representative. *Taylor v. Sheldon* (1961), 172 Ohio St. 118, 173 N.E.2d 892; *Ware v. Miami Valley Hospital* (1992), 78 Ohio App.3d 314, 604 N.E.2d 791; R.C. 2317.02 (A).

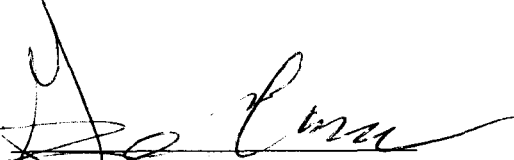
Thus, the donation of the Dr. Sheppard's biographical notes to the Western Reserve Historical Society by Faith Corrigan, subsequent to the deaths of Mr. Corrigan and Dr. Sheppard does not constitute a waiver of the attorney-client privilege. Although Ms. Corrigan may have been acting as Mr. Corrigan's personal representative, it is a well established principle that an attorney may not waive the attorney-client privilege, unless by the express consent of the client. *Taylor* at 123, 173 N.E.2d at 896.

Furthermore, Mr. Corrigan requested that Dr. Sheppard write these biographical notes in preparation for the 1954 murder trial. Therefore, these writings fall within the protection of the **work product doctrine** and may not be disclosed absent a showing of good cause. In the present matter, there is no "good cause" for the breach of the attorney-client privilege and said document should remain inadmissible.

III. Conclusion

For the reasons set forth above, this Court should enter an Order preventing the admission of the Dr. Sheppard's biographical notes, and the State should be precluded from violating the attorney-client privilege and the work-product doctrine by offering any testimony from these papers.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Terry H. Gilbert", is written over a horizontal line.

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